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MATTINGLY, STANGER & MALUR, P.C.
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In re Application of
Baychar
Application No. 10/786,416
Filed: February 26, 2004
Attorney Docket No. BAY-510

OFFICE OF PETITIONS
ON PETITION

This is a decision on the petition, filed January 7, 2009, under 37 CFR 1.181, requesting that the Office withdraw the holding of abandonment of the above-identified application. In the alternative, petitioner requests revival under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

This application was held abandoned for failure to respond in a timely and proper manner to the non-final Office action, mailed April 5, 2006, which set forth an extendable three (3) month period for reply. On August 7, 2006, applicant filed a Notice of Appeal and a petition for a one month extension of time. On October 5, 2006, applicants filed a petition for a three month extension of time and an amendment. A Notice of Abandonment was mailed on November 12, 2008.

Petitioner requests withdrawal of the holding of abandonment based on the assertion that an improper Notice of Appeal was filed on August 7, 2006 because the April 5, 2006 non-final Office action was mistakenly docketed as a final Office action.

Petitioner is informed that the application is not abandoned because a proper reply to the non-final Office action was received within the extendable period for reply. While the Notice of Appeal was an improper response to the non-final Office action, the amendment, filed October 5, 2006, was a proper response. The amendment was accompanied by a petition for a three month extension of time. The three month extension of time was charged on October 5, 2006.

Therefore, the October 5, 2006 amendment was filed within 6 months of the mailing of the April 5, 2006 non-final Office action.

The petition under 37 CFR 1.181 is **granted**, the holding of abandonment is withdrawn, and the November 12, 2008 Notice of Abandonment is **vacated**. No petition fee has been or will be charged in connection with this matter.

After the mailing of this decision, the application file will be forwarded to Technology Center A.U. 1794 for consideration of the amendment filed on October 5, 2006.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy